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Item no. 344202

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***Environmental Assessment and Consultation  
Improvement Act, 1996***



**EXPLANATORY NOTE**

The *Environmental Assessment Act* is being amended to modify the process for obtaining approval to proceed with an undertaking. Other amendments, generally of an administrative nature, are made to the Act and a consequential amendment is made to the *Environmental Bill of Rights, 1993*. The following are the major changes made by the Bill.

**1. Changes to the approval process**

Under the current Act, the Minister of Environment and Energy must "accept" an environmental assessment for an undertaking before deciding whether to "approve" the undertaking. (At this stage, the Ministry does an initial review of the environmental assessment.) Before accepting an environmental assessment, the Minister may order the proponent to provide additional information. The Minister may also amend the environmental assessment before accepting it.

The Minister then decides whether to give his or her approval to the proponent to proceed with the undertaking. The Minister may refer this decision to the Environmental Assessment Board and in certain circumstances the Minister is required to do so.

The amendments will replace this process with one requiring a proponent to submit proposed "terms of reference" that will govern the preparation of the environmental assessment. If the Minister approves the proposed terms of reference, the environmental assessment must comply with them. The proponent will be required to consult with interested persons when preparing the environmental assessment. (Section 3 of the Bill, sections 6 to 6.2 of the Act)

The amendments will enable the Minister to refer to mediation a dispute or concern about a proponent's application before any decision is made whether to approve the undertaking. (Section 3 of the Bill, section 8 of the Act)

Deadlines will be set out in the regulations for each of the steps in the new process.

New provisions will allow the Minister and the Board to defer a decision on a matter relating to an application, in circumstances they consider appropriate, and to refer a matter to another tribunal or entity that is authorized under another statute to decide such matters. (Section 3 of the Bill, sections 11.1 and 11.2 of the Act)

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A separate process will be included in the Act for "class environmental assessments". Under this process, a person may request the approval of a class environmental assessment that will govern the steps required under the Act for a specified class of undertakings. If the class environmental assessment is approved, a proponent of an undertaking in the class may proceed in accordance with the rules set out in the class environmental assessment or may apply for approval to proceed with the undertaking in the ordinary way under the Act. An exception is provided. (Section 3 of the Bill, Part II.1 of the Act)

Consequential changes are made throughout the Act, including changes to Board procedures, notice provisions and record-keeping requirements.

## **2. Changes affecting the Environmental Assessment Board**

The provision governing the composition of the Board will be amended, removing the prohibition on appointing public servants. The provisions setting out the term of office of the chair and the members of the Board will be repealed. (Subsections 4 (1) and (2) of the Bill, section 18 of the Act)

When the Minister refers an application to the Board, the Minister will be able to direct the Board to hear testimony in respect only of matters specified by the Minister. Under the current Act, the Board holds a hearing on the entire application. (Section 3 of the Bill, subsection 9 (3) of the Act)

The Minister will also be able to issue policy guidelines that the Board must consider when making decisions. (Section 7 of the Bill, section 27.1 of the Act)

## **3. Other amendments**

If an environmental law of another jurisdiction imposes requirements that are substantially the same as the requirements imposed under this Act, and if an undertaking is subject to both sets of laws, the Minister will be able to vary or dispense with a requirement under this Act. (Section 2 of the Bill, section 3.1 of the Act)

The Minister will be able to delegate his or her powers, with one exception, to Ministry employees. (Subsection 11 (2) of the Bill, section 31 of the Act)

A new official under the Act, the "Director", will be appointed by the Minister. One or more persons may be appointed and their powers may be restricted. (Section 12 of the Bill, section 31.1 of the Act)

Provisions governing the service of documents will be updated to permit deliveries by electronic and telephone transmission. (Section 15 of the Bill, section 36 of the Act)

The *Regulations Act* is made inapplicable to certain orders of the Minister concerning the

application of the Act and regulations. A consequential amendment is made to the *Environmental Bill of Rights, 1993* to clarify its operation when the *Regulations Act* does not apply to such orders. (Sections 2 and 22 of the Bill, section 3.2 of the *Environmental Assessment Act* and section 1 of the *Environmental Bill of Rights, 1993*)

Bill

1996

**An Act to improve environmental protection,  
increase accountability and enshrine public consultation  
in the Environmental Assessment Act**

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**ENVIRONMENTAL ASSESSMENT ACT**

**1. (1) Section 1 of the *Environmental Assessment Act*, as amended by the Statutes of Ontario, 1993, chapter 27, Schedule, is further amended by adding the following definition:**

"Director" means a person appointed under section 31.1 to act as a Director.

**(2) The definition of "environmental assessment" in section 1 of the Act is repealed.**

**(3) The definitions of "Minister" and "Ministry" in section 1 of the Act are repealed and the following substituted:**

"Minister" means the Minister of Environment and Energy;

"Ministry" means the Ministry of Environment and Energy.

**(4) The definition of "municipality" in section 1 of the Act is amended by striking out "or improvement district" in the fourth line and substituting "improvement district or the County of Oxford".**

**(5) Section 1 of the Act, as amended by the Statutes of Ontario, 1993, chapter 27, Schedule, is further amended by adding the following definition:**

"prescribed" means prescribed by the regulations.

**(6) Section 1 of the Act, as amended by the Statutes of Ontario, 1993, chapter 27, Schedule, is further amended by adding the following subsections:**

**Definition of classes**

(2) For the purposes of this Act or a regulation, a class may be defined with respect to an attribute, quality or characteristic or combination thereof.

**Same**

(3) A class may be defined to include or exclude one or more specified undertakings even though they would otherwise not be included in or excluded from the class.

**Same**

- (4) A class may be defined to consist of a specified person, thing, matter or activity.

**2. The Act is amended by adding the following sections:****Harmonization****3.1 (1) This section applies.**

- (a) if another jurisdiction imposes requirements with respect to an undertaking to which this Act applies; and
- (b) if the Minister considers the requirements imposed by the other jurisdiction to be equivalent to the requirements imposed under this Act.

**Order to vary or dispense**

- (2) The Minister may by order vary or dispense with a requirement imposed under this Act with respect to the undertaking in order to facilitate the effective operation of the requirements of both jurisdictions.

**Declaration of non-application**

- (3) The Minister may by order declare that this Act does not apply with respect to the undertaking.

**Declaration**

- 3.2 (1)** With the approval of the Lieutenant Governor in Council or of such ministers of the Crown as the Lieutenant Governor in Council may designate, the Minister may by order.

- (a) declare that this Act, the regulations or a matter provided for under the Act does not apply with respect to a proponent, a class of proponents, an undertaking or a class of undertakings;
- (b) suspend or revoke the declaration;
- (c) impose conditions on the declaration; or
- (d) amend or revoke conditions imposed on the declaration.

if the Minister considers that it is in the public interest to do so having regard to the purpose of this Act and weighing it against the injury, damage or interference that might be caused to any person or property by the application of this Act to the undertaking or class.

**Regulations Act**

- (2) The *Regulations Act* does not apply with respect to an order made under subsection (1).

3. Part II of the Act is repealed and the following substituted:

**PART II  
ENVIRONMENTAL ASSESSMENTS**

APPLICATION FOR APPROVAL

Application for approval

5. (1) Every proponent who wishes to proceed with an undertaking shall apply to the Minister for approval to do so.

Same

(2) The application consists of the proposed terms of reference submitted under subsection 6 (1) and the environmental assessment subsequently submitted under subsection 6.3 (1).

Prohibition

(3) No person shall proceed with an undertaking unless the Minister gives his or her approval to proceed under section 10 or the Board gives its approval under section 9 or 9.1.

Same

(4) No person shall proceed with an undertaking in a manner inconsistent with a condition imposed by the Minister or the Board for proceeding with it.

Potential non-compliance

(5) A proponent who has received approval to proceed with an undertaking shall promptly notify the Minister if the proponent may not be able to comply with the approval as a result of a change in circumstances.

Terms of reference

6. (1) The proponent shall give the Ministry proposed terms of reference governing the preparation of an environmental assessment for the undertaking.

Same

(2) The proposed terms of reference must,

- (a) indicate that the environmental assessment will be prepared in accordance with the requirements set out in section 6.1 and subsection 6.2 (2);
- (b) indicate that the environmental assessment will be prepared in accordance with such requirements as may be prescribed for the type of undertaking the proponent wishes to proceed with; or
- (c) set out in detail the requirements for the preparation of the environmental assessment.

#### Approval

(3) The Minister shall approve the proposed terms of reference if the Minister is satisfied that an environmental assessment prepared in accordance with them will be consistent with the purpose of this Act and with the public interest.

#### Mediation

(4) Before approving proposed terms of reference, the Minister may refer a matter in connection with them to mediation and section 8 applies with necessary modifications.

#### Deadline

(5) The Minister shall notify the proponent whether or not the proposed terms of reference are approved and shall do so by the prescribed deadline.

#### Obligation to consult

6.1 When preparing an environmental assessment, the proponent shall consult about the undertaking with such persons as may be interested.

#### Preparation of environmental assessment

6.2 (1) The proponent shall prepare an environmental assessment for an undertaking in accordance with the approved terms of reference.

#### Contents

(2) Subject to subsection (3), the environmental assessment must consist of,

- (a) a description of the purpose of the undertaking;
- (b) a description of and a statement of the rationale for,
  - (i) the undertaking,
  - (ii) the alternative methods of carrying out the undertaking, and
  - (iii) the alternatives to the undertaking;
- (c) a description of,
  - (i) the environment that will be affected or that might reasonably be expected to be affected, directly or indirectly,
  - (ii) the effects that will be caused or that might reasonably be expected to be caused to the environment, and
  - (iii) the actions necessary or that may reasonably be expected to be necessary to prevent, change, mitigate or remedy the effects upon or



the effects that might reasonably be expected upon the environment,

by the undertaking, the alternative methods of carrying out the undertaking and the alternatives to the undertaking;

- (d) an evaluation of the advantages and disadvantages to the environment of the undertaking, the alternative methods of carrying out the undertaking and the alternatives to the undertaking; and
- (e) a description of any consultation about the undertaking by the proponent and the results of the consultation.

#### Exception

(3) The approved terms of reference may provide that the environmental assessment consist of information other than that required by subsection (2).

#### Submission of environmental assessment

**6.3** (1) The proponent shall submit the environmental assessment for an undertaking to the Ministry and shall notify the clerk of each municipality in which the undertaking is to be carried out that it has been submitted.

#### Amendment or withdrawal

(2) After it is submitted to the Ministry, the proponent may amend or withdraw the environmental assessment at any time before the deadline for completion of the Ministry review of the environmental assessment.

#### Same

(3) The proponent may amend or withdraw the environmental assessment after the deadline for completion of the Ministry review only upon such conditions as the Minister may by order impose.

#### Same

(4) The Minister may by order amend or revoke conditions imposed under this section.

#### Public notice of submission

**6.4** (1) The proponent shall give public notice of the submission of the environmental assessment and shall do so by the prescribed deadline and in the manner required by the Director.

#### Same

(2) The public notice must indicate where and when members of the public may inspect the environmental assessment and state that they may give their comments about it to the Ministry. It must also contain such other information as may be prescribed or as the Director may require.

#### Notice to other persons

(3) The proponent shall give the information contained in the public notice to such other persons as the Director may require and shall do so by the deadline for giving the public notice.

#### Public inspection of environmental assessment

6.5 (1) Any person may inspect the environmental assessment in the places and at the times set out in the public notice.

#### Comments

(2) Any person may comment in writing on the undertaking or on the environmental assessment to the Ministry and, if the person wishes the comments to be considered during the preparation of the Ministry review, shall submit the comments by the prescribed deadline.

### MINISTRY REVIEW

#### Ministry review of environmental assessment

7. (1) The Ministry shall prepare a review of the environmental assessment and shall take into account any comments received from members of the public by the deadline prescribed under subsection 6.5 (2).

#### Completion date

(2) The review must be completed by the prescribed deadline.

#### Same

(3) The Director may extend the deadline for completing the review if he or she considers that there is a compelling reason (which is unusual, unexpected or urgent) to do so. The Director shall notify such persons as he or she considers appropriate if the deadline is extended.

#### Deficient environmental assessment

(4) If the Director considers that the environmental assessment is deficient in relation to the approved terms of reference and the purpose of the Act, the Director may give the proponent a statement describing the deficiencies and shall do so at least 14 days before the deadline for completing the review.

#### Remedying deficiencies

(5) The proponent may take such steps as are necessary to remedy the deficiencies described in the statement and shall do so within seven days after receiving the statement.

#### Rejection of environmental assessment

(6) The Minister may reject the environmental assessment if the Director is not satisfied that the deficiencies have been remedied within the seven-day period.

#### Notice of rejection

(7) The Director shall notify the proponent, the clerk of each municipality in which the undertaking is to be carried out and the public if the Minister rejects the environmental assessment, and shall do so before the deadline for completing the review.

#### Notice of completion of Ministry review

7.1 (1) The Director shall notify the proponent and the clerk of each municipality in which the undertaking is to be carried out when the Ministry review is completed.

#### Public notice

(2) The Director shall give public notice of the completion of the review in the manner the Director considers suitable.

#### Same

(3) The public notice must indicate where and when members of the public may inspect the review and state that they may give their comments about it to the Ministry. It must also contain such other information as may be prescribed.

#### Public inspection of Ministry review

7.2 (1) Any person may inspect the Ministry review in the places and at the times set out in the public notice.

#### Comments

(2) Any person may comment in writing on the undertaking, the environmental assessment and the review to the Ministry and, if the person wishes the comments to be considered when the Minister decides the proponent's application, shall submit the comments by the prescribed deadline.

#### Request for hearing

(3) Any person may request the Minister to refer the proponent's application to the Board for a hearing and decision and shall make the request in writing to the Ministry before the deadline for submitting comments on the review.

### DECISIONS ON THE APPLICATION

#### Mediation

8. (1) Before the application is decided, the Minister may appoint one or more persons to act as mediators who shall endeavour to resolve such matters as may be identified by the Minister as being in dispute or of concern in connection with the undertaking.

#### Same

(2) The Minister may appoint the Board to act as mediator.

#### Notice of mediation

(3) The Minister shall notify the following persons of his or her decision to refer certain matters to mediation and shall give them written reasons for the decision:

1. The proponent.
2. The clerk of each municipality in which the undertaking is to be carried out.
3. Every person who submitted comments under subsection 6.5 (2) or 7.2 (2).
4. Such other persons as the Minister considers appropriate.

#### Parties

(4) The parties to the mediation are the proponent and such other persons as the Minister may identify. Instead of identifying parties by name, the Minister may determine the manner in which they are to be identified and invited to participate.

#### Closed proceedings

(5) Unless the mediators decide otherwise, the mediation is not open to the public.

#### Report

(6) The mediators shall give the Minister a written report on the conduct and results of the mediation.

#### Deadline

(7) The mediators shall give their report to the Minister within 60 days after their appointment or by such earlier deadline as the Minister may specify.

#### Confidentiality

(8) No person except the Minister shall make public any portion of the report.

#### Disclosure

(9) The Minister shall make the report public no later than the date on which he or she decides the proponent's application or refers it to the Board for a decision.

#### Fees and expenses

(10) The proponent shall pay the fees and reasonable expenses of the mediators.

#### Discretionary referral to Board

9. (1) The Minister may refer an application to the Board for a decision.

#### Powers of the Board

(2) The Board may make any decision the Minister is permitted to make under subsection 10 (1).

#### Scope of hearing

(3) The Minister may direct the Board to hear testimony concerning only those matters that the Minister specifies, and the Board shall do so. The Minister may amend a direction to the Board at the Board's request or on the Minister's initiative.

#### Same

(4) A direction by the Minister does not preclude the Board from hearing argument by the parties on any issue relating to the application.

#### Same

(5) The Board is not required to hear testimony in respect of a matter specified by the Minister if the Board is satisfied that disputes about it have been substantially resolved or concerns about it have been substantially satisfied.

#### Basis for decision

(6) The Board shall consider the following documents when deciding an application:

1. The approved terms of reference for the environmental assessment.
2. The environmental assessment.
3. The Ministry review of the environmental assessment.
4. The comments submitted under subsections 6.5 (2) and 7.2 (2).
5. The mediators' report, if any, given to the Minister under section 8.
6. The direction, if any, given by the Minister under subsection (3).

#### Validity of decision

(7) A decision of the Board is not invalid solely on the grounds that a matter was not addressed by testimony at a hearing.

#### Deadline

(8) The Board shall make its decision by the deadline the Minister specifies or by such later date as the Minister may permit if he or she considers that there is a sufficient reason (which is unusual, urgent or compassionate) for doing so.

#### Referral to Board following request

**9.1** (1) If under subsection 7.2 (3) a person requests the Minister to refer an application to the Board for hearing and decision, the Minister shall refer it to the Board unless in his or her absolute discretion.

- (a) the Minister considers the request to be frivolous or vexatious;

- (b) the Minister considers a hearing to be unnecessary; or
- (c) the Minister considers that a hearing may cause undue delay in determining the application.

#### Same

(2) Subsections 9 (2) to (8) apply with respect to a hearing and decision under this section.

#### Review of Board decision

**9.2** (1) The Minister may review a decision of the Board under section 9 or 9.1 and may make an order or give a notice described in subsection (2) within 28 days after he or she receives a copy of the decision or within such longer period as the Minister may determine within that 28-day period.

#### Order

(2) With the approval of the Lieutenant Governor in Council or such ministers of the Crown as the Lieutenant Governor in Council may designate, the Minister may,

- (a) by order, vary the decision of the Board;
- (b) by order, substitute his or her decision for the decision of the Board; or
- (c) by a notice to the Board, require the Board to hold a new hearing respecting all or part of the application and reconsider its decision.

#### Notice of order, etc.

(3) The Minister shall notify the persons who were given a copy of the Board's decision,

- (a) that the Minister has made an order or given a notice described in subsection (2); or
- (b) that the Minister intends to do so within the period specified in the notice.

#### Copy of order, etc.

(4) The Minister shall give a copy of his or her order or notice under subsection (2), together with the reasons for it, to the persons who were given a copy of the Board's decision.

#### When Board decision is effective

**9.3** A decision of the Board is effective only after the expiry of the period under section 9.2 during which the Minister may review it and make an order or give a notice in respect of it.

#### Decision by Minister

10. (1) The Minister may decide an application and, with the approval of the Lieutenant Governor in Council or of such ministers of the Crown as the Lieutenant Governor in Council may designate, the Minister may,

- (a) give approval to proceed with the undertaking;
- (b) give approval to proceed with the undertaking subject to such conditions as the Minister considers necessary to carry out the purpose of this Act and in particular requiring or specifying,
  - (i) the methods and phasing of the carrying out of the undertaking,
  - (ii) the works or actions to prevent, mitigate or remedy effects of the undertaking on the environment,
  - (iii) such research, investigations, studies and monitoring programs related to the undertaking, and reports thereof, as the Minister considers necessary,
  - (iv) such changes in the undertaking as the Minister considers necessary,
  - (v) that the proponent enter into one or more agreements related to the undertaking with any person with respect to such matters as the Minister considers necessary,
  - (vi) that the proponent comply with all or any of the provisions of the environmental assessment that may be incorporated by reference in the approval,
  - (vii) the period of time during which the undertaking or any part thereof shall be commenced or carried out; or
- (c) refuse to give approval to proceed with the undertaking.

Basis for decision

(2) The Minister shall consider the following matters when deciding an application:

1. The purpose of the Act.
2. The approved terms of reference for the environmental assessment.
3. The environmental assessment.
4. The Ministry review of the environmental assessment.

5. The comments submitted under subsections 6.5 (2) and 7.2 (2).
6. The mediators' report, if any, given to the Minister under section 8.
7. Such other matters as the Minister considers relevant to the application.

#### Deadline

- (3) The Minister shall decide the application by the prescribed deadline.

#### Validity of decision

- (4) The decision of the Minister is not invalid solely on the grounds that it was not made before the deadline for making it.

#### Notice to proponent

- (5) The Minister shall notify the proponent of his or her decision and shall give the proponent written reasons for it.

#### Notice to others

- (6) The Minister shall notify every person who submitted comments to the Ministry under subsection 7.2 (2) of his or her decision.

#### Deadline, Minister's decisions

11. The Minister shall determine by the prescribed deadline whether to refer a matter to mediation and whether to refer the application to the Board or to decide it under section 10.

#### Deferral of part of a decision

- 11.1 (1) The Minister may defer deciding a matter that relates to an application if the Minister considers it appropriate to do so because the matter is being considered in another forum or for scientific, technical or other reasons.

#### Same, Board

- (2) The Board may defer deciding a matter that relates to an application if the Board considers it appropriate to do so because the matter is being considered in another forum or for scientific, technical or other reasons.

#### Deadline

- (3) The Minister or the Board shall make any decision to defer deciding a matter by the deadline by which the application must otherwise be decided.

#### Referral of part of a decision

- 11.2 (1) The Minister may refer to the Board, another tribunal or another entity for a decision a matter that relates to an application if he or she considers it appropriate in the circumstances.



#### Restrictions

(2) The Minister may give such directions or impose such conditions on the referral as the Minister considers appropriate and may direct that the matter be decided without a hearing, whether or not a hearing on the matter is otherwise required.

#### Same

(3) If the Minister refers a matter under this section, the Minister shall refer it to the tribunal or entity, if any, that is authorized under another Act to decide such matters. However, the Minister is not required to select that tribunal or entity if he or she has a reason not to.

#### Deemed decision

(4) The decision of the Board, tribunal or entity shall be deemed to be the decision of the Minister.

#### Referral by Board

(5) The Board may refer to another tribunal or entity for decision a matter that relates to an application and subsections (1) to (4) apply with necessary modifications with respect to the referral.

#### Reconsideration of decisions

**11.3** (1) The Minister may reconsider a decision of the Board under section 9 or 9.1 or a decision of the Minister under section 10 if there is a change in circumstances or new information concerning the application and if the Minister considers it appropriate to do so.

#### Same

(2) The Minister may request the Board to determine whether it is appropriate to reconsider a decision and the Board shall do so.

#### Amendment, etc., of decision

(3) The Minister may amend or revoke a decision in accordance with such rules and subject to such restrictions as may be prescribed.

### OTHER MATTERS

#### Proposed change to an undertaking

**12.** If a proponent wishes to change an undertaking after receiving approval to proceed with it, the proposed change to the undertaking shall be deemed to be an undertaking for the purposes of this Act.

#### Replacement of environmental assessment

**12.1** (1) A proponent may submit a second environmental assessment to replace an environmental assessment withdrawn by the proponent or rejected by the Minister.

#### Same

(2) The second environmental assessment must be prepared in accordance with the approved terms of reference.

#### Activities permitted before approval

**12.2** (1) Before a proponent receives approval to proceed with an undertaking, a person may,

- (a) take any action in connection with the undertaking that may be necessary to comply with this Act;
- (b) acquire property or rights in property in connection with the undertaking;
- (c) prepare a feasibility study and engage in research in connection with the undertaking.

#### Restriction on issuing certain documents

(2) No person shall issue a document evidencing that an authorization required at law to proceed with the undertaking has been given until the proponent receives approval under this Act to proceed with the undertaking.

#### Exception

(3) Despite subsection (2), a document described in that subsection may be issued with respect to an activity permitted by subsection (1) before the proponent receives the approval.

#### Restriction on provincial funding

(4) The Crown or a Crown agency shall not give or approve a loan, grant, subsidy or guarantee with respect to the undertaking until the proponent receives approval to proceed with the undertaking.

#### Exception

(5) Despite subsection (4), a loan, grant, subsidy or guarantee described in that subsection may be given or approved with respect to an activity permitted by subsection (1) before the proponent receives the approval.

#### Prohibition following approval

(6) No person shall issue a document described in subsection (2) or give a loan, grant, subsidy or guarantee described in subsection (4) with respect to an undertaking if it would be inconsistent with a condition imposed upon the approval to proceed with the undertaking.

#### Proceedings under other Acts

**12.3** An approval to proceed with an undertaking does not preclude a proceeding for a contravention of the *Environmental Protection Act* or the *Ontario Water Resources Act* or a regulation made under either Act.

#### Transition

**12.4** (1) This Part, as it read immediately before the coming into force of section 3 of the *Environmental Assessment and Consultation Improvement Act, 1996*, continues to apply with respect to environmental assessments submitted before the coming into force of that section.

#### Same

(2) Despite subsection (1), the Minister may by order direct that all or any portion of this Part or Part II.1, as they read after section 3 of the *Environmental Assessment and Consultation Improvement Act, 1996* comes into force, apply with respect to an environmental assessment described in subsection (1).

### **PART II.1 CLASS ENVIRONMENTAL ASSESSMENTS**

#### Application for approval

**13.** (1) A person may apply to the Minister to approve a class environmental assessment with respect to a class of undertakings.

#### Same

(2) The application consists of the proposed terms of reference submitted under subsection 13.1 (1) and the class environmental assessment subsequently prepared in accordance with section 14 and submitted under subsection 6.3 (1).

#### Prohibition

(3) No person shall proceed with an undertaking with respect to which a class environmental assessment applies.

- (a) unless the person does so in accordance with the class environmental assessment; or
- (b) unless the Minister gives his or her approval to proceed under section 10 or the Board gives its approval under section 9 or 9.1.

#### Terms of reference

**13.1** (1) The applicant shall give the Ministry proposed terms of reference governing the preparation of the class environmental assessment.

#### Same

(2) The proposed terms of reference must.

- (a) indicate that the class environmental assessment will be prepared in accordance with the requirements set out in section 13.2 and subsection 14 (2);
- (b) indicate that the class environmental assessment will be prepared in accordance

with such requirements as may be prescribed for the type of undertaking to which it relates; or

- (c) set out in detail the requirements for the preparation of the class environmental assessment.

#### Same

(3) Subsections 6 (3) to (5) apply with respect to the terms of reference with necessary modifications.

#### Obligation to consult

**13.2** When preparing the proposed class environmental assessment, the applicant shall consult about it with such persons as may be interested.

#### Preparation of class environmental assessment

**14.** (1) The applicant shall prepare the class environmental assessment in accordance with the approved terms of reference.

#### Contents

(2) Subject to subsection (3), the proposed class environmental assessment must contain the following information:

1. A description of the class of undertakings to which it applies.
2. A description of the reasons for using a class environmental assessment with respect to undertakings in the class.
3. A description of the similarities and differences to be expected among the undertakings in the class.
4. A description of the expected range of environmental effects that may result from proceeding with undertakings in the class.
5. A description of measures that could be taken to mitigate against adverse environmental effects that may result from proceeding with undertakings in the class.
6. A description of the process to be used by a proponent of a proposed undertaking to consult with the public and with persons who may be affected by the undertaking.
7. A description of the method to be used to evaluate a proposed undertaking with respect to the matters described in paragraphs 4 to 6.

8. A description of the method to be used to determine the final design of a proposed undertaking based upon the evaluation described in paragraph 7.
9. Such other information as may be prescribed.

#### Exception

(3) The approved terms of reference may provide that the class environmental assessment consist of information other than that required by subsection (2).

#### Regulations

(4) The Lieutenant Governor in Council may, by regulation, expand upon the requirements set out in paragraphs 1 to 8 of subsection (2) or provide that one or more of those paragraphs do not apply in the case of a class environmental assessment for a specified type of undertaking.

#### Application of Part II

15. Sections 6.3 to 11.2 apply with necessary modifications with respect to a proposed class environmental assessment.

#### Effect of approval

15.1 (1) Section 5 does not apply with respect to a proponent who proceeds with an undertaking in accordance with an approved class environmental assessment.

#### Exception

(2) Section 5 applies if the Minister makes an order under section 16 with respect to an undertaking. In that case, subsection 13 (3) does not apply.

#### Eligible proponents

15.2 (1) This section applies if an approved class environmental assessment provides that only certain proponents or classes of proponents may proceed with undertakings in accordance with it.

#### Regulations

(2) The Lieutenant Governor in Council may, by regulation, authorize additional proponents or classes of proponents to proceed with undertakings in accordance with a specified class environmental assessment, may impose conditions on the proponents' doing so and may vary the class environmental assessment as it applies to those proponents.

#### Order to comply with Part II

16. (1) The Minister may by order require a proponent to comply with Part II before proceeding with a proposed undertaking to which a class environmental assessment would otherwise apply.

#### Same

(2) In an order under subsection (1), the Minister may do the following:

1. Set out directions with respect to the terms of reference governing the preparation of an environmental assessment for the undertaking.
2. Declare that the proponent has satisfied such requirements for the preparation of an environmental assessment as are specified in the order.

Same, additional conditions

(3) The Minister may by order impose conditions in addition to those imposed upon the approval of the class environmental assessment with respect to a proposed undertaking that is to proceed in accordance with the class environmental assessment.

Basis for order

(4) The Minister shall consider the following matters when making an order under this section:

1. The purpose of the Act.
2. The factors suggesting that the proposed undertaking differs from other undertakings in the class to which the class environmental assessment applies.
3. The significance of the factors and of the differences mentioned in paragraph 2.
4. Any reasons given by a person who requests the order.
5. The mediators' report, if any, following a referral under subsection (6).
6. Such other matters as may be prescribed.
7. Such other matters as the Minister considers appropriate.

Request for order

(5) Any person may request the Minister to make an order under this section or the Minister may make an order upon his or her own initiative.

Mediation

(6) The Minister may refer a matter in connection with a request to mediation and section 8 applies with necessary modifications.

Deadline after request

(7) If the Minister is requested to make an order, the Minister shall decide before the prescribed deadline whether to do so.

#### Refusal after request

(8) If, after receiving a request, the Minister refuses to make an order, the Minister shall notify the person who made the request of his or her decision and shall give the person reasons for the decision.

#### Notice of order

(9) The Minister shall give a copy of an order under this section, together with the reasons for it, to the proponent, to the person, if any, who requested an order and to such other persons as the Minister considers advisable.

#### Transition

17. (1) A class environmental assessment approved by the Minister before this Part comes into force shall be deemed to have been approved under this Part and to have been valid from the date on which it was approved.

#### Same

(2) A class environmental assessment approved by the Minister before this Part comes into force shall be deemed to comply with this Part.

#### Same

(3) Section 16 applies with respect to an undertaking commenced after this Part comes into force that is proceeding in accordance with a class environmental assessment approved by the Minister before this Part comes into force.

#### **4. (1) Subsection 18 (2) of the Act is repealed and the following substituted:**

#### Composition of Board

(2) The Board shall be composed of not fewer than five persons who shall be appointed by the Lieutenant Governor in Council.

#### **(2) Subsections 18 (5), (6) and (7) of the Act are repealed.**

#### **(3) Subsection 18 (13) of the Act is repealed.**

#### **(4) Subsection 18 (15) of the Act is repealed and the following substituted:**

#### Participation in decision

(15) Only members who are present throughout the hearing of a matter shall participate in making the Board's decision about it.

#### **(5) Section 18 of the Act is amended by adding the following subsections:**

#### Parties

(17.1) The parties to a proceeding with respect to an application are the proponent or

applicant, any person who under subsection 7.2 (3) requests the Minister to refer the application to the Board, such other persons as the Board considers have an interest in the application and such other persons as the Board may specify having regard to the purpose of this Act.

#### Public notice of hearing

(17.2) The Board shall give notice of its hearing to the public in such manner as the Minister may direct and to such other persons as the Minister may require.

**(6) Subsection 18 (22) of the Act is repealed.**

**(7) Subsections 18 (23) and (24) of the Act are repealed and the following substituted:**

#### Notice of decision

(23) The Board shall give a copy of its decision on an application to the Minister, the parties, each person who submits comments under subsection 7.2 (2), any person appointed under subsection 18 (16) and the clerk of each municipality in which the undertaking is to be carried out.

**5. Section 20 of the Act is repealed.**

**6. Section 23 of the Act, as amended by the Statutes of Ontario, 1993, chapter 27, Schedule, is repealed.**

**7. Part V of the Act is amended by adding the following section:**

#### Policy guidelines

**27.1.** The Minister may issue policy guidelines concerning the protection, conservation and wise management of the environment and the Board shall consider the guidelines in making decisions under this Act.

**8. The English version of section 28 of the Act is amended by striking out "such terms and conditions" in the eleventh and twelfth lines and substituting "such conditions".**

**9. Section 29 of the Act is repealed.**

**10. (1) Subsection 30 (1) of the Act is repealed and the following substituted:**

#### Record

(1) The Director shall maintain a record for every undertaking in respect of which an application is submitted under Part II and for every application submitted under Part II.1.

#### Same

(1.1) The record consists of the following documents:



1. The proposed and the approved terms of reference.
2. The environmental assessment or the class environmental assessment, as the case may be.
3. The Ministry review of the environmental assessment or the class environmental assessment, as the case may be.
4. All comments submitted under subsections 6.5 (2) and 7.2 (2).
5. All decisions of the Director, the Minister and the Board in relation to the application, together with the reasons for the decisions.
6. All notices given in respect of the application.
7. Such other documents as the Director or Minister considers appropriate.

**(2) Subsection 30 (2) of the Act is amended by striking out "Minister" in the first line and substituting "Director".**

**11. (1) The English version of clause 31 (f) of the Act is amended by striking out "such terms and conditions" in the fifth line and substituting "such conditions".**

**(2) Section 31 of the Act, as amended by the Statutes of Ontario, 1993, chapter 27, Schedule, is further amended by adding the following subsections:**

**Delegation**

(2) The Minister may delegate to an employee or class of employees in the Ministry any power conferred or duty imposed on the Minister under this Act, other than the power to make decisions under subsection 10 (1), and may impose limitations, conditions and requirements on the delegation.

**Same**

(3) The delegation must be made in writing.

**Same**

(4) An employee shall be deemed to be acting in accordance with the delegation when he or she is purporting to exercise a delegated power or to perform a delegated duty.

**12. The Act is amended by adding the following section:**

**Appointment of Directors**

**31.1 (1) The Minister may appoint one or more employees in the Ministry to act as Director under this Act.**

Same, classes of employee

(2) The Minister may appoint the members of one or more classes of employees in the Ministry to act as Director under this Act.

Same, not employees

(3) Subject to the approval of the Lieutenant Governor in Council, the Minister may appoint persons other than those described in subsection (1) or members of classes of persons other than those described in subsection (2) to act as Director under this Act.

Restrictions

(4) The Minister may limit an appointment such that the person appointed may act only under such provisions of this Act or the regulations as may be specified in the appointment and may impose other limitations, conditions and requirements on the appointment.

Same

(5) An appointment must be made in writing.

**13. Section 33 of the Act is repealed.**

**14. Clause 35 (b) of the Act is amended by inserting after "the Minister" in the second line "a delegate of the Minister, a Director".**

**15. (1) Subsections 36 (1), (2), (3) and (4) of the Act are repealed and the following substituted:**

Service, etc., of documents

(1) A document that must be given to a person or served under this Act is sufficiently given or served,

- (a) by personal delivery to the person;
- (b) using regular mail delivery addressed to the person at the most recent address on the records of the Ministry or the Board, as the case may be;
- (c) using any method of mail delivery that permits the delivery to be verified;
- (d) by electronic transmission of the document, if the person is equipped to receive such transmissions;
- (e) by telephone transmission of a facsimile of the document, if the person is equipped to receive such transmissions.

Deemed receipt, regular mail

(2) A document delivered using regular mail delivery shall be deemed to be received on

the fifth day after it is mailed.

Same, electronic or telephone transmission

(3) A document delivered by electronic or telephone transmission shall be deemed to be received on the day after it is sent, unless that day is a holiday in which case the document shall be deemed to be received on the next day that is not a holiday.

Failure to receive document

(4) If a person acting in good faith does not, through absence, accident, illness or other cause beyond the person's control, receive the document until a later date than the deemed day of receipt, subsection (2) or (3), as the case may be, does not apply.

**(2) Subsection 36 (5) of the Act is amended by striking out "Minister" in the first line and substituting "Director".**

**16. Section 37 of the Act is repealed and the following substituted:**

Notice to clerk of a municipality

37. If a notice or document is required to be given under this Act to the clerk of a municipality, it must be given only to the clerk of a county, metropolitan area, regional area, district area, city, town, village, township, improvement district or the County of Oxford.

Notice by publication

37.1 (1) This section applies if the Minister, the Board or the Director considers it to be impracticable to give a notice or a document personally to any or all of the persons entitled to receive it.

Notices

(2) A notice may be given by public advertisement or by such other method as the Minister, the Board or the Director considers appropriate.

Notice of contents of documents

(3) Reasonable notice of the contents of a document may be given by public advertisement or such other method as the Minister, the Board or the Director considers appropriate.

Deemed receipt

(4) Notice given by public advertisement shall be deemed to be received on the first day on which it is published. Notice given by another method shall be deemed to be received on the day specified by the Minister, the Board or the Director.

Consolidation of notices

37.2 A notice to be given under this Act may be consolidated with a notice under another Act concerning the same or a related matter.

**17. Clauses 39 (f), (g) and (h) of the Act are repealed and the following substituted:**

- (f) exempting any person, class of persons, undertaking or class of undertakings from this Act or the regulations or a section or portion of a section thereof and imposing conditions with respect to the exemption;
- (g) designating as an undertaking or a class of undertakings to which the Act applies despite an exemption authorized under clause (f).
  - (i) an enterprise or a class of enterprises,
  - (ii) an activity or a class of activities,
  - (iii) a proposal, plan or program or a class of proposals, plans or programs in respect of an enterprise, activity or class thereof,

if it is carried on by or on behalf of Her Majesty in right of Ontario, by one or more public bodies or by one or more municipalities;

- (h) providing for forms and for their use;
- (i) prescribing the method of determining each deadline that is to be prescribed under this Act;
- (j) prescribing any matter required or permitted to be prescribed under this Act.

**18. Section 40 of the Act is repealed.**

**19. Section 41 of the Act is amended by adding the following subsection:**

Same

(2) The application of a regulation may be restricted to any class of person, thing, matter or activity.

**20. Section 42 of the Act is repealed and the following substituted:**

Adoption of codes, etc., in regulations

**42.** (1) A regulation may adopt by reference, in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary, a code, formula, standard, protocol or procedure and may require it to be complied with. It may be adopted as it may be amended from time to time.

Same

(2) The adoption by reference of an amendment to a code, formula, standard, protocol or

procedure comes into effect upon publication of a notice of the amendment in *The Ontario Gazette* or in the registry under the *Environmental Bill of Rights, 1993*.

**21. Subsection 43 (3) of the Act is amended by inserting after "clause 39 (f)" in the second line "or (g)".**

#### **ENVIRONMENTAL BILL OF RIGHTS, 1993**

**22. Clause 1 (6) (c) of the *Environmental Bill of Rights, 1993* is repealed and the following substituted:**

- (c) a proposal for a regulation is implemented when the regulation that would implement the proposal is filed with the Registrar of Regulations in accordance with the *Regulations Act* or, if that Act does not apply, when the regulation comes into force.

#### **COMMENCEMENT AND SHORT TITLE**

##### **Commencement**

**23. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.**

##### **Short title**

**24. The short title of this Act is the *Environmental Assessment and Consultation Improvement Act, 1996*.**

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